90-1648

Supreme Court, U.S.
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MAR 1 1991
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

D. Georgiou,
Petitioner

v.

George A. Gauthier,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

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Pro se Petitioner

QUESTIONS PRESENTED FOR REVIEW:

1. Do penumbra doctrine and Supreme Court precedent (1) privileges against compelled acceptance of unwanted ineffective attorney, protect the fundamental right to the Aid of Legal Counsel, and set aside an instrument signed under confusion during court procedure by person whose attorney had turned a proverbial deaf ear to dismissal during same court procedure?

2. Do IV and XIV Amendment privileges against unreasonable searches and seizures and against deprivation of property, protect person's counterclaims (2) and original contents of

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(1): Evitt v. Lucey, 469 U.S. 387 /(1985)

(2): Fed. R. Civil P. Rule 13

person's apartment subjected to successive breaking and entering (and removal of materials including but not limited to original reference records of proper but never taken up complaint of discrimination against a governmental agency), encouraged, in part, by demonstrated refusal of police to apply due diligence, and designedly concealed by a suit for possession of the apartment?

3. Do pursuit of happiness privileges protect against annihilation of the peaceful enjoyment of the premises and against imposition of burden and restrictions concerning the ability to follow one's profession, through successive and continuing breaking and entering associated with relentless removal of pertinent records, documents, mail, and other actions?

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OPINION BELOW

The Appellate Court of Illinois, First District, which decided the case on the merits, issued its decision in the form of a Rule 23 Order, appended at 1A.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under 28 USC 1257.

PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
FIRST JUDICIAL DISTRICT

1. The Supreme Court of the United States on the 18th day of December 1990 entered the following order:

No. A-473 D. Georgiou, Petitioner, v. George A. Gauthier. ORDER. UPON CONSIDERATION of the application of counsel for the petitioner, IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including March 1, 1991. /s/ John Paul Stevens Associate Justice of the Supreme Court of the United States. Dated this 18th day of December 1990.

2. The petitioner Dr. D. GEORGIOU (DIMITRIOS C. GEORGIOU, M.D., PSYCHIATRY

AND NEUROLOGY) had respectfully petitioned the Supreme Court of Illinois for leave to appeal from the decision (Rule 23 Order) of the Appellate Court of Illinois, First District, so that the said Rule 23 Order of the Appellate Court might be reviewed and reversed or modified. The Supreme Court of Illinois (case No. 70670) on October 3, 1990, denied the petition for leave to appeal.

The Appellate Court of Illinois filed its decision (Rule 23 Order), (appended herewith), on May 30, 1990. A petition for Rehearing was filed timely on June 20, 1990, which was denied on July 12, 1990. A Rule 368 Affidavit in order to stay the mandate was filed timely on July 17, 1990. The petition for leave to appeal in the Supreme Court of Illinois was timely filed following the

denial of the petition for rehearing on July 12, 1990. The mandate was stayed on July 17, 1990.

3. The points relied upon for reversal were the following:

A) On its own motion the Appellate Court of Illinois appeared re-opening on May 29, 1990, the case (which was already decided either on May 24, 1990, (day of Notice of the Appellate Court to the parties that the Appellate Court's "decision on the case will be filed on May 30, 1990"), or on May 27, 1990, (typed on the Appellate Court's "decision" (Rule 23 Order), filed on May 30, 1990, (see appendix)), by granting on May 29, 1990, Defendant's Motion for Leave to file response to the objections of plaintiff to defendant's motion for leave to file reply brief in excess of page limitation instanter.

The granting of defendant's response probably indicated a "last moment" finding of fact by the Appellate Court, justifying the defendant. Inconsistent with its probable finding of fact the Appellate Court of Illinois did not alter its already prepared "decision" and the confusion still existing among practitioners with regard to admissibility of "last moment" findings documents the need for further clarification by the Appellate Court. In addition, the fact that the Rule 23 Order was "filed" (and not "entered") emphasizes more the need for further clarification by the Appellate Court.

B) Inconsistent with the fact that the Defendant's Motion for Stay of Possession, filed on November 1?, 1989, and granted on November 28, 1989, was

based, in part, on Defendant's Memorandum of November 4, 1989, (see Appendix), which had been appended to said Motion for Stay of Possession several months prior to the April 4, 1990, denial of the defendant's additional Motion to File Appendix to Opening Brief Separately (containing the said Memorandum), mentioned in the Rule 23 Order of the Appellate Court (page 6, first paragraph), the Appellate Court stated that "the Memorandum ... is not now before us" (page 6 of Rule 23 Order). The question if the granting of Motions, based on appended pleadings, documents the admissibility of the said pleadings, pertains to the uncertainty still in effect with regard to the admissibility of certain pleadings and to the demand for further instruction by the Appellate Court.

C) The Appellate Court denied Defendant's Motion to file Reply Brief in Excess of Page Limitation Instanter, having indicated on its pertinent Order the fact that "an objection having been filed by (plaintiff-) appellee", despite the fact that plaintiff-appellee had used verbatim a long section of defendant's Reply Brief in order to compose his "objections", having therefore introduced the defendant's Reply Brief into the adversarial procedure. The above fact illustrates the conflict still involved with regard to the admissibility of certain pleadings with pertinence to the granting or denying motions and to sustaining objections, and to the need for further clarification by the Court.

D) The fact that the Circuit Court

had been fully advised in the premises with regard to a lengthy testimony by defendant, during a Court inquiry or investigation process, at the initiative of the Court. It was given to a Circuit Court Judge (whose name and professional identity were unknown to defendant who was simply answering the detailed questioning with regard to defendant's contention pertaining to the successive and relentless breaking and entering into defendant's apartment targeting principally against items invaluable for the defendant's professional development, financial reputation, credit reputation and against records of various sorts from defendant's career as the Chief Medical Officer and Consultant in Psychiatry and Neurology with the Department of Defense Armed Forces Examining and Entrance Station

(whose name has been changed currently to MEPS), and complaints the defendant had filed following his resignation from the above mentioned position (about which please see below). The above mentioned questioning occured in the geographical area of the Court room of the trial. The said Honorable Judge was later shown to be the principal presiding Judge of the case. The above facts prove that the Circuit Court had already taken cognizance at the Court's own initiative of defendant's second contention (see Rule 23 Order of the Appellate Court of Illinois, appended), regarding breaking and entering and associated violations and permanently either destroying or removing selectively the documentations of defendant's achievements, professional documents, records of all kinds, items mentioned

above, valuable property of many kinds and, once, the defendant's car from its leased --for years-- parking spot at the lot of the house (or home) where the apartment is, "by first pushing it into the alley" (according to a neighbor's statement), and the car was never seen again. The pertinent questions had been raised at the Circuit Court level. Nevertheless, in conflict with the facts, the Appellate Court (on page 10, first paragraph, of its Rule 23 Order) states that "questions ... may not be raised for the first time upon appeal..." discussing on questions which in fact had been raised in the Circuit Court level, not on an ex parte basis but at the Courts initiative within the operative term "the Court being fully advised on the premises". The conflict and confusion become more

pronounced knowing that "the Supreme Court (of the State of Illinois) has held that paragraph (e) (7) of the Supreme Court Rule 341 (e), like the rest of the Rule, states an admonition to the parties rather than a jurisdictional limitation on the Court, noting the power of the Reviewing Court under Rule 366. Hux v. Raben, 38 Ill 2d 223, 230 N.E.2d 831 (1967)" (Smith-Hurd Ill. Annotated Statutes Ch. 110A, Practice Rules, S. Ct. Rule 341, Historical and Practice Notes). Because of the above mentioned conflict and confusion, more light is needed from the Court.

E) The fact that removed documents from defendant's apartment include but they are not limited to voluminous materials pertaining to a still pending complaint of defendant versus a govern-

mental agency (Department of the Army) (see Appendix), including (without being limited to) documents of a previous procedure in the U.S. District Court, Northern District of Illinois, and the fact that the removal of documents and the destruction of documents affect defendant unfavorably with regard to his pending complaints mentioned above, further clarification is needed by the Court with regard to further appropriate procedures and proper and sufficient redress.

(Note: At a certain point during defendant's tenure as Chief Medical Officer and Consultant in Psychiatry (1977-1980) with the Department of the Army (or the Department of Defense) Armed Forces Examining and Entrance Station (currently named MEPS), defen-

dant started receiving pressures in order to accept Commission and to become a Commissioned Officer. The Chief Medical Officer's position was a civilian position (General Services Administration). Then the above mentioned pressures were replaced by discriminatory actions. Defendant complained, then resigned in protest, submitting additional complaints of discrimination. Defendant, recently, during the preparation of this Petition for a Writ of Certiorari, contacted by phone the Solicitor General's Office in Washington, D.C., and discussed with the Deputy Solicitor General. Defendant thinks that the U.S. Solicitor General must support the said petitioner's position through the filing of an Amicus Curiae Brief and/or otherwise. The Deputy U.S. Solicitor General stated that their

office defends the Government "unless the Government is wrong". Defendant stated that "this is such a case". The Deputy Solicitor General (Mr. John G. Roberts, Jr.) stated in addition that their office occasionally defends cases not involving the Government as a party.)

F) Inaccurately the Appellate Court indicates on page 7 of its Order (copying from plaintiff's brief), the also inaccurately and repeatedly stated in plaintiff's brief "operative language that it is fully advised in the premises" (emphasis added). The fact is that (as Defendant has stated in his Reply Brief) no Order of the Circuit Court contains the above "language". Confusion originating from incorrect statements in Court decisions, taken from briefs of parties, makes necessary further clari-

fication by the Court.

4. Statement of facts: The factual bases leading to an understanding of the case, pertain to Petitioner's two contentions discussed in the Rule 23 Order of the Appellate Court of Illinois, as well technical and other issues. As Petitioner has mentioned above, his second contention was in fact raised in the circuit court. The particulars are as follows: Petitioner during a period of time his apartment continued getting periodically burglarized, was summoned for trial, by having been served by one piece of paper (see, Record on Appeal, document C9) and was required to appear on October 23, 1989, in Court Room L of the Circuit Court, 2nd Municipal District. On October 20, 1989, Friday, in the early afternoon,

Defendant visited the above mentioned Courthouse with the purpose to find out if additional papers had been filed with the Court, in order to take cognizance of them. Petitioner (Defendant) having found the door of the Court Room L closed, found himself wondering what he should do, then Petitioner was approached by the person mentioned above (page 7), who asked Petitioner (Defendant) a very large number of pertinent questions, after Petitioner indicated the purpose of his visit; the above person did not identify himself, until the end of the conversation when he indicated "I am a Judge". On Monday, October 23, 1989, on the trial date, Defendant was surprised to see, in the bench of the Court Room L, the same Honorable Judge whose questions Defendant had answered as mentioned above.

His name on the bench read, Judge Topol. Later, when Defendant (Petitioner) received the record on Appeal, realized that that the Honorable Judge Topol had been involved with the case continuously since 9-25-89 (see, Record on Appeal, C2). The only day Judge Topol was not involved with the case, was the "trial day" since he had to be absent.

5. Argument: The issue of burglaries and related issues were raised by Petitioner at the Circuit Court level, as issues of fact. The plaintiff and agents have committed hostile actions and offenses against the right of possession of property by Petitioner, through failure to protect Petitioner's apartment and through destruction and removal of Petitioner's property in and from the Petitioner's apartment

and otherwise, and the same continued for a long time. When Defendant reported the offenses once more to the Evanston Police Department, Defendant (Petitioner) was told, once more, the following: "Talk to your landlord".

The landlord has admitted that he "had left the door of the apartment unlocked, after leaving...", with pertinence to the burglaries prior to May 1985. (Note: Landlord had entered without permission). Relevantly the 13 Am Jur 2d, cumulative supplement Apr. 1990, at 112, states: Sect. 37. Ownership of structure entered: At p. 342, following note 17: "A landlord can be guilty of burglarizing the premises of his tenant by breaking and entering without permission of the tenant" (17.5). Bradley v. State, 244 Ind. 630, 195 NE2d 347,

holding that burglary is an offense against possession of property, not ownership. Also see 13 Am Jur 2d, p. 328 sect. 13 Constructive breaking, under note 4.

The fact that Petitioner's apartment was and keeps getting burglarized does have immediate factual and legal relation and is properly before this Court on review.

It is a fact that, when Petitioner returned in May 1985 from his trip to his mother's home in Athens, Greece, (where Petitioner had been in successive trips in order to take care of his mother since she had suffered a fracture on a background of osteoporosis and had undergone surgery twice in order to treat a complication of bone infection

resisting treatment with antibiotics), found his apartment door unlocked, his apartment burglarized, almost everything in the apartment turned upside down, broken, missing or destroyed. Petitioner's records, of all sorts, were mostly missing or destroyed. Petitioner's original research documentation and other original papers, almost ready for publication, were missing. (Note: One original long paper authored and treasured by Petitioner because of its originality, being the foundation for a planned new book on the subject of "Psychiatry and Physics, or the New Psychiatry" , in preparation during the last fifteen years, since 1971, was missing in its entirety. Prior announcements of the work under preparation, have coined the term " The New Psychiatry".).

The Petitioner's records were including, but they were not limited to, professional career records, professional and licensure or other Medical Boards Certificates, original letters from very important persons pertaining to Petitioner's professional career, reflecting very favorably upon Petitioner and being extremely important for his professional future, Internal Revenue Service records (tax returns), diaries, personal notebooks, mail items e.g. documents based on previous credit rating and credit reputation of invaluable financial importance for Defendant (e.g. numbered documents pertaining to "premium gold" credit cards of very high lines of credit "already issued", requiring only a signature or minimal current information, to which (documents) Petitioner was unable to refer after

the documents had been removed from the apartment because the original number on them was a required reference, records of administrative and legal procedures of extreme importance (as the complaints of discrimination against the Department of the Army are and as the appended Appreciation Letter from the Department of the Army, issued prior to the discrimination era, is.). Additional missing items were personal photographs of Petitioner, items of every day use, e.g. clothing, shoes, books, credit cards, and credit records dating back to 1970 and other items. The burglaries continued occuring, despite protective attempts and in addition were extending to replaced certificates and papers. The landlord's comments, when reachable, were sarcastic, and the damages to Petitioner's professional career tremendous.

The Evanston Police Department, upon Defendant's (Petitioner's) complaints, indicated repeatedly: "Talk to your landlord" and the apparent attention of the Police to this matter appeared to be minimal. Interestingly, similar was the"attention" by the Fire Department, in two instances, when Petitioner called them to open door "because of forgotten key", despite the evidence of invasion.

Because of the limited action or the lack of action to correct the situation by the Evanston Police Department, Petitioner has tried his best in order to preserve the evidence of the burglaries and of the destructions. A possession by the landlord would have eliminated the evidence. Petitioner has waived nothing. Additional details are

mentioned in the Rule 23 Order of the Appellate Court, appended.

The plaintiff has demonstrated actual malice or malice in fact and express malice, as clearly reported in 52 Am Jur 2d, MALICE, sect. 1,2. In addition the plaintiff has committed malicious mischief. Actual malice is indeed involved as an essential element and punitive damages should be allowed. (22 Am Jur 2d, DAMAGES sect. 249, 250). Criminal mischief was also committed since its essence, i.e. the reckless, knowing or intentional damaging of another's property without a right to do so, was present (see, 54 C.J.S. p. 508). Specific Malice and Intent to damage and injure the professional status, career, financial reputation, credit reputation of Petitioner were

also present. The Sect. 650 Declarations pertaining to State of mind (29 Am Jur 2d EVIDENCE, Sect. 650, p. 700 et seq.) are also applicable.

The November 4, 1989, Memorandum, once more, is admissible in the Appendix, as mentioned above, because of the additional reason that the Supreme Court of Illinois Rule 342, Smith-Hurd Illinois Annotated Statutes, chapter 110A, Practice Rules, 1989 Cumul. Ann. Pocket Part, page 53, Historical Note indicates: "The 1988 amendment in the subdivision relating to the contents of the Appendix, inserted "any pleadings which are the basis of the Appeal or pertinent to it".

An additional evidence showing that portions of the Rule 23 Order of

the Appellate Court have been copied directly from the plaintiff's brief, is the fact that the Rule 23 Order refers to the No. of the Circuit Court case where the Appeal was taken from as No. 88 M2 1681 (instead of the correct 89 M2 1681), a mistake made originally by the plaintiff on his plaintiff's brief.

6. The conclusion the Petitioner (Defendant) had presented in previous briefs is the following and is always applicable and it is being reconfirmed: Considering all of the foregoing, the facts and issues one can only wonder what a reasonable independent observer would make of such a situation where a tenant is allowed to be victimized through breaking and entering and consequent actions of removal activities,

searches, seizures and of destruction of Petitioner's (Defendant's) property and of other entities, and through additional actions, in the most reckless, heedless and wrongful manner over and over again. Petitioner (Defendant) respectfully requests that the Court regard these larger economic implications and assess punitive damages in the amount of twenty million dollars. In addition Petitioner (Defendant) seeks actual damages (days lost from professional occupation, destroyed property, removed property) of two million dollars, general damages (mental suffering, injury to reputation) of thirty million dollars. Total damages: fifty-two million dollars. By awarding Defendant (Petitioner) the full amount the Court will reaffirm the Constitutional rights of Petitioner (Defendant)

and the right of the individual to privileges protecting equally under the law.

7. Since it is perhaps necessary to mention the month and the year for at least a number of the breaking and entering offenses which were committed: Mar. 85, Apr. 85, May 85, Aug. 85, Oct. 85, Dec. 85, Jan. 86, Mar. 86, May 86, Jul. 86, Oct. 86, Dec. 86, Feb. 87, May 87, Jul. 87, Sep. 87, Nov. 87, Dec. 87,Jan. 88, Feb. 88, Mar. 88, May 88, Jun. 88, Aug. 88, Oct. 88, Nov. 88, Dec. 88, Jan. 89, Feb. 89, Mar. 89, Apr. 89, May 89, Jun. 89, Jul. 89, Aug. 89, Sep. 89, Oct. 89, Nov.89, Dec. 89, Jan. 90, Feb. 90, Mar. 90, Apr. 90, May 90, Jun. 90, Jul. 90, Aug. 90, Sep. 90, Oct. 90, Nov. 90, Dec.90, Jan.91, Feb. 91, were the dates of some of such offenses.

8. Petitioner would like to make the additional comment that with regard to Question Presented For Review No. 1, in Petitioner's opinion, the Plaintiff, because of reasons mentioned above, has invoked equitable estoppel, therefore the instrument (the "agreed order") is to be set aside for this reason, in addition to the Constitutional Law reasons. As the Rule 23 Order of the Appellate Court of Illinois indicates, the Petitioner asserted his rights "for three hours", since the proposed "agreed order" was not equitable. In addition, the attorney failed in his counseling that the rights of Defendant (Petitioner), as discussed in this Brief and Petition for a Writ of Certiorari, "were protected by the agreed order" (see, Rule 23 Order of the Appellate Court, Pages 2 and 3).

The Congressional Quarterly's Guide to the U.S. Supreme Court, Second Edition, 1990, page 559: The Aid of Legal Counsel, at page 564: A Rule of Reason, indicates: "In Evits v. Lucey, the Court held that an attorney's failure to file a statement of appeal by the legal deadline constituted evidence that he was not providing his client the effective aid of counsel. Evitts v. Lucey, 469 U.S. 387 (1985)." In the instant case too the attorney's failure "constituted evidence that he was not providing his client the effective aid of counsel".

WHEREFORE, the Petitioner prays that Certiorari is granted.

Respectfully,

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